One Sustainable Method Recycling, LLC *and* David Kollmann. Case 15–CA–147008

December 14, 2015

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA AND MCFERRAN

The General Counsel seeks a default judgment in this case on the ground that One Sustainable Method Recycling, LLC (the Respondent), has failed to file an answer to the complaint. Upon a charge and amended charges filed on February 25, April 27, and July 20, 2015, respectively, by David Kollmann, the General Counsel issued a complaint on August 28, 2015, against the Respondent alleging that it has violated Section 8(a)(1) of the Act. The Respondent failed to file an answer.

On October 5, 2015, the General Counsel filed with the National Labor Relations Board a Motion for Default Judgment. Thereafter, on October 6, 2015, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively states that an answer must be received on or before September 11, 2015, and that if no answer is filed, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated September 22, 2015, notified the Respondent of its failure to file an answer. The letter, which is attached to the motion as Exhibit 3, further states that unless an answer was received by September 30, 2015, a motion for default judgment would be filed. No answer or request for an extension of time to file an answer was received by that date.

In the absence of good cause being shown for the failure to file an answer, we deem the allegations in the complaint to be admitted as true, and we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a limited liability company with an office and place of business from September 1, 2014, through November 15, 2014, in Little Rock, Arkansas (the Respondent's facility), and with an office and place of business in Louisville, Kentucky, and has been engaged in the processing and the nonretail sale of waste materials.

In conducting its operations annually, the Respondent purchased and received goods valued in excess of $50,000 at its Louisville, Kentucky facility directly from points outside the State of Kentucky, and sold and shipped from its Louisville, Kentucky facility goods valued in excess of $50,000 directly to points outside the State of Kentucky.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Sheri Mitchell – Owner and CEO

Earl McWhorter – Manager

About October 14, 2014, the Respondent's employee Kollmann engaged in concerted activities with other employees for the purposes of mutual aid and protection by requesting employees be provided with running water, bathrooms, and drinks and snacks in the vending machines, and by threatening to call the Occupational Safety and Health Administration (OSHA).

About October 21, 2014, the Respondent, by CEO Mitchell, at the Respondent's facility, told employees they could quit if they did not like the Respondent's policies and procedures.

About October 29, 2014, the Respondent, by Manager McWhorter, took the following actions at the Respondent's facility: prohibited its employees from taking pictures at the Respondent's facility because he believed they were engaged in protected concerted activities; threatened its employees with termination because he believed they were engaged in concerted activities; and threatened its employees with arrest because he believed they were engaged in protected concerted activities.

On the same day, the Respondent told Kollmann that he must delete any pictures that he took inside the Respondent's facility, or else the Respondent would break his phone and call the police, and Kollmann would be arrested and terminated, thereby causing Kollmann to quit.

By the conduct described in the preceding paragraph, the Respondent caused the termination of its employee Kollmann. About October 29, 2014, the Respondent terminated Kollmann.

CONCLUSION OF LAW

The Respondent engaged in the conduct described above because employee Kollmann engaged in concerted activities with other employees for the purpose of mutual aid and protection and to discourage its employees from engaging in these or other concerted activities. By the conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(1) by (1) telling its employees that they could quit if they did not like the Respondent's policies and procedures, (2) prohibiting employees from taking pictures at its facility because it believed they were engaging in protected concerted activities, (3) threatening its employees with termination and arrest because it believed they were engaging in protected concerted activities, and (4) causing an employee to quit by telling him that he must delete any pictures that he took inside the Respondent's facility, or else the Respondent would break his phone and call the police and the employee would be arrested and terminated, we shall order it to cease and desist from this conduct.

Further, having found that the Respondent violated Section 8(a)(1) by causing the termination of employee Daniel Kollmann, we shall order the Respondent to offer him full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed. We shall also order the Respondent to make Kollmann whole for any loss of earnings and other benefits he may have suffered as a result of the Respondent's unlawful conduct, less any net interim earnings. Backpay shall be computed in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).[1]

In addition, we shall order the Respondent to compensate Kollmann for the adverse tax consequences, if any, of receiving a lump-sum backpay award and to file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters. *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014).

Finally, the Respondent shall also be required to remove from its files any and all references to the unlawful discharge and to notify Kollmann in writing that this has been done and that the unlawful conduct will not be used against him in any way.

ORDER

The National Labor Relations Board orders that the Respondent, One Sustainable Method Recycling, LLC, Little Rock, Arkansas and Louisville, Kentucky, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Telling employees that they can quit if they do not like the Respondent's policies and procedures.

(b) Prohibiting its employees from taking pictures at its facility because the Respondent believes they are engaging in protected concerted activities.

(c) Threatening its employees with arrest or termination because the Respondent believes they are engaging in protected concerted activities.

(d) Causing employees to quit by threatening them with property damage, arrest, and termination if they do not cease engaging in protected concerted activities.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer David Kollmann full reinstatement to his former job or,

[1] In the complaint, the General Counsel requests that the discriminatee be reimbursed for any out-of-pocket expenses incurred while searching for work as a result of the discrimination against him. Because the relief sought would involve a change in Board law, we believe that the appropriateness of this proposed remedy should be resolved after a full briefing by the affected parties, and there has been no such briefing in this case. Accordingly, we decline to order this relief at this time. See, e.g., *The H.O.P.E. Program*, 362 NLRB No. 128, slip op. at 2 fn. 1 (2015); *Ishikawa Gasket America, Inc.*, 337 NLRB 175, 176 (2001), enfd. 354 F.3d 534 (6th Cir. 2004), and cases cited therein.

if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Kollmann whole for any loss of earnings and other benefits suffered as a result of its unlawful conduct, in the manner set forth in the remedy section of this decision.

(c) Compensate Kollmann for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters.

(d) Within 14 days from the date of this Order, remove from its files any and all reference to the unlawful discharge of Kollmann and, within 3 days thereafter, notify him in writing that this has been done and that its unlawful conduct will not be used against him in any way.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facilities in Little Rock, Arkansas and Louisville, Kentucky copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 21, 2014.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 15 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. December 14, 2015

Mark Gaston Pearce,	Chairman
Kent Y. Hirozawa,	Member
Lauren McFerran,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT tell employees that they can quit if they do not like our policies and procedures.

WE WILL NOT prohibit employees from taking pictures at our facility because we believe that they are engaging in protected concerted activities.

WE WILL NOT threaten employees with arrest or termination because we believe they are engaging in protected concerted activities.

WE WILL NOT cause employees to quit by threatening them with property damage, arrest, and termination if they do not cease engaging in protected concerted activities.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted By Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, within 14 days from the date of the Board's Order, offer David Kollmann full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make David Kollmann whole for any loss of earnings and other benefits resulting from our unlawful conduct, plus interest.

WE WILL compensate Kollmann for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharge of Kollmann, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that our unlawful conduct will not be used against him in any way.

ONE SUSTAINABLE METHOD RECYCLING, LLC

The Board's decision can be found at www.nlrb.gov/case/15-CA-147008 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.